IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMM. FOR JUDGMENT NO.677 of 2003

IN

SUMM.SUIT NO.62 OF 2003

Smt Jamotridevi R.Jatia .. Plaintiff

versus

Purushottamlal M.Rungta.. Defendant

Mr S.P.Dalal for Plaintiff

Mr D.D.Madon i/b Madekar & Co for Defendant

CORAM : D.G. KARNIK, J

DATED : 20th April 2005.

P.C:-

1. Heard learned counsel for the parties. This Summons for Judgment is taken out by the plaintiff in a suit filed by her for recovery of Rs.10,00,000/- advanced by her and interest thereon to the defendant.

2. The plaintiff lent and advanced to the defendant a sum of Rs.10,00,000/- for the security of repayment of which the defendant issued 5 promissory notes of

Rs.2,00,000/- each between 25th December, 1999 to 1st January, 2000. Thereafter the plaintiff issued to the defendant 5 cheques of Rs.2,00,000/- each between 21st November, 2000 and 5th December, 2000. However, each of the cheque when presented for payment were dishonoured. The plaintiff has therefore filed this suit for the recovery of Rs.10,00,000/- and interest thereon at 21 % p.a. which is the rate of interest mentioned in the promissory notes.

3. By filing an affidavit in reply the defendant disputes the liability to make the payment. The defences raised by the defendant are considered below:-

4. The defendant firstly contends that he repaid a sum of Rs.7,00,000/- to the plaintiff and C.A. Nandkishore Tibrewalla by 4 cheques as stated in para 6 of the affidavit in reply. However, in para 9 of the very affidavit in reply, the defendant has admitted that the said Nandkishore Tibrewalla repaid to him a sum of Rs.7,00,000/-. Therefore, this payment of Rs.7,00,000/- paid to Tibrewalla cannot be regarded as payment towards the said liability.

5. In para 6 of the affidavit in reply the defendant further contends that he has paid to the plaintiff a sum of Rs.5,00,000/- in cash from time to time. The defendant has not produced any receipt regarding the alleged repayment of Rs.5,00,000/-. Furthermore, the defendant has not even stated the date on which the said amount was allegedly repaid It is pertinent to note that the defendant is a businessman. The defendant has not even produced the statement of account regarding the alleged repayment of Rs.5,00,000/-. Thus, the defence of the defendant that he has repaid Rs.5,00,000/- is a defence of no substance and is raised only for the purpose of delaying the payment.

6. The defendant then contends that he paid to the plaintiff Rs.6,00,000/- by cheques as stated in para 10 of the affidavit in reply. In para 4 of the plaint, the plaintiff has stated that there was another transaction of loan of Rs.5,00,000/- between the plaintiff and the defendant and the defendant had repaid to the plaintiff a sum of Rs.5,00,000/- in instalment of Rs.1,00,000/- on 22nd April, 2000, Rs.1,00,000/- on 29th July, 2002, Rs.1,00,000/- on 20th August, 2002, Rs.1,00,000/- on 21st August, 2002

and Rs.1,00,000/- on 7th November, 2002. The planitiff has also not denied that she received Rs.6,00,000/- as stated in para no. 10 of the affidavit in reply. In the circumstances, whether the repayment of Rs.6,00,000/- was in respect of some other transaction or not raises a triable issue.

7. The defendant then contends that he repaid a sum of Rs.2,00,000/- on 15th September, 1999 and the said sum was shown as a gift to the plaintiff's husband. In para 5 of the rejoinder, the plaintiff has admitted receipt of Rs.2,00,000/- by cheque in the name of her husband but contends that the plaintiff's husband had earlier deposited Rs.2,00,000/- in cash in the account of the defendant. This again is a matter which requires evidence and trial. In the circumstances, the defence regarding the repayment of Rs,2,00,000/- also cannot be said to be a defence without substance.

8. Thus, in my view the defendant has a reasonable defence regarding the following sums:

> " i) Rs.6,00,000/- paid by the defendant to the plaintiff in the manner stated in para 10 of the affidavit in reply ;

ii) Rs.2,00,000/- paid by the defendant to the plaintiff's busband on 15th September, 1999.

9. If the sum of Rs.8,00,000/- is to be deducted from the principal sum of Rs.10,00,000/-, interest would also have to be reduced from the dates of repayment. On rouch calculations submitted by the counsel the interest would stand reduced by about lakh of rupees and the claim of the plaintiff would be reduced to Rs.16,30,000/- minus Rs.9,00,000/- = Rs.7,30,000/-.

10. In the circumstances, I grant conditional leave to the defendant to defend the suit subject to to his depositing in the court a sum of Rs.7,00,000/- within a period of 7 weeks. On such deposit the amount shall be invested in a bank of the choice of the defendant if such choice is indicated at the time of deposit or else in Bank of India, Main Branch, Opposite High Court, Mumbai initially for a period of 13 months to be renewed from time to time till the disposal of the suit. The defendant shall file the written statement within 8 weeks.

D.G.KARNIK, J